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ABSTRACT

In the absence of a statutory provision to the contrary, the power to employ teachers and other school officials presupposes the power of dismissal. Proceedings for the dismissal of a teacher are frequently regulated by statute. As a result, the proceedings depend on the wording of the particular statute in force. This paper discusses the status of legislation on teacher dismissal for incompetence according to (1) Mississippi statutory law, (2) statutory law in five other States, (3) major cases that have been in Mississippi courts, (4) the status of the case law on the subject elsewhere, (5) model legislation that has been proposed or recommendations for legislative action proposed by various agencies, and provides (6) recommendations developed on the basis of the material presented in the paper. (Author)

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TEACHER DISMISSAL FOR INCOMPETENCE

by

Jerry H. Robbins, Ed.D.

This paper is one of a series sponsored by the Governor's Office of Education and Training. Special thanks must go to Governor William Waller and Dr. Milton Baxter, Executive Director of the Governor's Office of Education and Training, for providing the support for the research and writing that have gone into these papers.

Each of the papers in this series is designed to speak to the following questions: (1) What is the statutory law in Mississippi on the subject, if any? (2) What is the statutory law in approximately five other states on the same subject? (3) What major cases, if any, have been in courts in Mississippi? (4) In very general terms, what is the status of the case law on the subject elsewhere? (5) What model legislation, if any, has been proposed or what recommendations for legislative action, if any, have been proposed by various agencies? (6) What recommendations seem to follow from the information presented in the answers to questions 1-5?

The author wishes to acknowledge the assistance in developing this paper of Dr. Joseph Blackston, Associate Professor of Educational Administration; Dr. Ronald Partridge, Assistant Professor of Educational Administration; and George Lyles, a student in the School of Law; all at The University of Mississippi.

University, Mississippi
November, 1973

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In the absence of a statutory provision to the contrary,
the the power to employ teachers and other school officials pre-
supposes the power of dismissal. Both of these powers are
generally lodged in local school boards. (1)

The right of dismissal thus given to a school board is
absolute and cannot be bargained away or limited by a contract.
This power, however, is subject to constitutional limitations.
It may not be exercised in unconstitutionally arbitrary or dis-
criminatory manner or in a way that forces a teacher to choose
between exercising his legitimate constitutional rights and his
right of opportunity to hold public employment. (2)

Proceedings for the dismissal of a teacher are frequently
regulated by statute. As a result, the proceedings depend on the
wording of the particular statute in force. (3)

Statutory Law

Mississippi. The Mississippi Law provides as follows:

For incompetence, neglect of duty, immoral conduct,
intemperance, brutal treatment of a pupil or other good
cause the county superintendent of education or superin-
tendent of the municipal separate school district, as the
case may be, may remove or suspend any superintendent,
principal or teacher in any school district, but before
being so removed or suspended the superintendent, princi-
pal or teacher shall be notified of the charges against
him and he shall be advised that he is entitled to a

public hearing upon said charges at a date to be fixed in such notice. The notice shall be in writing and shall be given at least ten (10) days before the date fixed therein for the hearing. For the purpose of conducting such hearings the county superintendent of education or the superintendent of the municipal separate school district shall have the same power as a justice of the peace to issue subpoenas for witnesses and to compel their attendance and the giving of evidence by them. From the decision made at said hearing the superintendent, principal or teacher and those persons opposed to such principal, superintendent or teacher shall be allowed an appeal to the state board of education and for the purpose of such appeal either oral or written statements, under oath, of the facts may be made by the county superintendent of education or the municipal separate school district superintendent and the other interested parties. Any party aggrieved by the said ruling of the state board of education may effect an appeal therefrom to the chancery court in the same manner as appeals from the state education finance commission. When a superintendent, principal or teacher is removed as provided in this section the county superintendent or the municipal separate school district superintendent shall notify the board of trustees of the school district involved and a superintendent, principal or teacher shall be selected to fill such vacancy in the manner otherwise provided in this act. (4)

Note that there is no expressed reference to parents' rights to request removal of teachers or other school personnel for incompetence. However, the statute does refer to "those persons opposed to such principal, superintendent or teacher." This might well be interpreted as a right of parents to initiate action against school personnel for incompetence or any of the other reasons mentioned.

Alabama. The Alabama Teacher's Tenure Act provides the following:

Cancellation of an employment contract with a teacher on continuing service status may be made for incompetency, insubordination, neglect of duty, immorality, justifiable decrease in the number of teaching positions, or other good and just cause; but cancellation may not be made for political or personal reasons.

An employment contract with a teacher on continuing service status may be cancelled only in the following manner:

The employing board of education shall give notice in writing to the teacher stating in detail the reasons for the proposed cancellation and naming the exact time and place at which the teacher may appear before the board to answer said notice, which date shall not be less than twenty not more than thirty days after the service of such notice to the teacher by United States registered mail with postage prepaid thereon, to said teacher's last known address, such notice shall also inform the teacher that in order to contest said cancellation the teacher must file with the board at least five days prior to the date the matter is set for hearing notice of an intention to contest. Nothing herein provided is intended to prevent the suspension of a teacher pending a hearing on such proposed cancellation and the final determination thereof. No teacher dismissed as the result of such hearing shall receive compensation for the period of such suspension. If the teacher does not file an intention to contest with the board at least five days prior to the date the matter is set for hearing then the employing board may dismiss the teacher by a majority vote and such dismissal shall be final. At a contested hearing, which shall be public or private at the discretion of the teacher, each party shall have a right to appear with or without counsel and shall have a right to be heard and to present the testimony of witnesses and other evidence bearing upon the reasons for the proposed cancellation of such contract and shall have a right to cross-examine the adverse witnesses. The board, or its authorized representative, shall have power to administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and production of papers necessary as evidence with the dispute or claim. If requested, the board shall issue subpoenas for witnesses to testify either in support of the charges or on behalf of the teacher. . . .(6)

Connecticut. The Connecticut law provides the following:

(a) Any board of education may authorize the superintendent or supervising agent to employ teachers. Any superintendent or supervising agent not authorized to employ teachers shall submit to the board of education nominations for teachers for each of the schools in the town or towns in his jurisdiction and, from the persons so nominated, teachers may be employed. Such board shall accept or reject such nominations within thirty-five days from their submission. Any such board of education may request the superintendent or supervising agent to submit multiple nominations of qualified candidates, if more than one candidate is available for nomination, for

any supervisory or administrative position, in which case the superintendent or supervisory agent shall submit such a list and may place the candidates on such list in the order in which such superintendent or supervisory agent recommends such candidates. If such board rejects such nominations, the superintendent or supervising agent shall submit to such board other nominations and such board may employ teachers from the persons so nominated and shall accept or reject such nominations within one month from their submission. The contract of employment of a teacher shall be in writing and may be terminated at any time for any of the reasons enumerated in subdivisions (1) to (6), inclusive, of subsection (b) of this section, but otherwise it shall be renewed for a second, third or fourth year unless such teacher has been notified in writing prior to March first in one school year that such contract will not be renewed for the following year, provided, upon the teacher's written request, such notice shall be supplemented within five days after receipt of such request by a statement of the reason or reasons for such failure to renew. Such teacher may, upon written request filed with the board of education within ten days after the receipt of such notice, be entitled to a hearing before the board to be held within fifteen days of such request. The teacher shall have the right to appear with counsel of his choice at such hearing.

(b) Beginning with and subsequent to the fourth year of continuous employment of a teacher by a board of education, the contract of employment of a teacher shall be renewed from year to year, except that it may be terminated at any time for one or more of the following reasons: (1) Inefficiency or incompetence; (2) insubordination against reasonable rules of the board of education; (3) moral misconduct; (4) disability, as shown by competent medical evidence; (5) elimination of the position to which the teacher was appointed if no other position exists to which he may be appointed if qualified; or (6) other due and sufficient cause; provided, prior to the termination of a contract, a board of education shall give the teacher concerned a written notice that termination of his contract is under consideration and, upon written request filed by such teacher with such board within five days after receipt of such notice, shall within the next succeeding five days give such teacher a statement in writing of its reason therefor. Within twenty days after receipt from a board of education of written notice that contract termination is under consideration, the teacher concerned may file with such board a written request for a hearing, which such board shall hold within fifteen days after receipt of such request. Such hearing shall be public if the

teacher so requests or the board so designates. The teacher concerned shall have the right to appear with counsel of his choice at such hearing, whether public or private. A board of education shall give the teacher concerned its written decision within fifteen days after such hearing, together with a copy of a transcript of the proceedings, which shall be furnished without cost. Nothing herein contained shall deprive a board of education of the power to suspend a teacher from duty immediately when serious misconduct is charged without prejudice to the rights of the teacher as otherwise provided in this section.

(c) For the purposes of this section, the term "teacher" shall include each employee of a board of education, below the rank of superintendent or supervising agent, who holds a regular certificate issued by the state board of education.

(d) The provisions of any special act regarding the dismissal or employment of teachers shall prevail over the provisions of this section in the event of conflict.

(e) After having had a contract of employment as a teacher renewed for a fourth year in any one municipality or school district, any teacher who is subsequently employed in any other municipality or school district shall become subject to the provisions of subsection (b) of this section after eighteen months of continuous employment, unless, prior to completion of the eighteenth month following commencement of the employment in such town, such teacher has been notified in writing prior to March first in accordance with the provisions of subsection (a) of this section that such contract will not be renewed for the following year irrespective of the duration of employment under the then existing contract beyond the date of said notification or unless, for a period of five or more years immediately prior to such subsequent employment, such teacher has not been in any public school within the state.

(f) Any teacher aggrieved by the decision of a board of education after a hearing as provided in subsection (b) of this section may appeal therefrom, within thirty days of such decision, to the court of common pleas for the county or judicial district in which such board is located. Such appeal shall be made returnable to said court in the same manner as is prescribed for civil actions brought to said court. Any such appeal shall be a privileged case to be heard by the court as soon after the return days as is practicable. The board

of education shall file with the court a copy of the complete transcript of the proceedings of the hearing held by the board for such teacher, together with such other documents, or certified copies thereof, as shall constitute the record of the case appealed from. The court, upon such appeal, shall review the proceedings of such hearing and shall allow any party to such appeal to introduce evidence in addition to the comments of such transcript, if it appears to the court that additional testimony is necessary for the equitable disposition of the appeal. The court, upon such appeal and after a hearing thereon, may affirm or reverse the decision appealed from. Costs shall not be allowed against such board unless it appears to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from. (7)

Louisiana. The following provisions are found in the
Teacher's Tenure Act of Louisiana:

A. A permanent teacher shall not be removed from office except upon written and signed charges of wilful neglect of duty, or incompetency or dishonesty or of being a member of or of contributing to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the State of Louisiana, and then only if found guilty after a hearing by the school board of the parish or city, as the case may be, which hearing may be private or public, at the option of the teacher. At least fifteen days in advance of the date of the hearing, the school board shall furnish the teacher with a copy of the written charges. The teacher shall have the right to appear before the board with witnesses in his behalf and with counsel of his selection, all of whom shall be heard by the board at the said hearing. Nothing herein contained shall impair the right of appeal to a court of competent jurisdiction.

B. If a permanent teacher is found guilty by a school board, after due and legal hearing as provided herein, on charges of wilful neglect of duty, or of incompetency, or dishonesty, or of being a member of or of contributing to any group, organization, movement or corporation that is by law or injunction prohibited from operating in the State of Louisiana, and ordered removed from office, or disciplined by the board, the teacher may, not

more than one year from the date of the said finding, petition a court of competent jurisdiction for a full hearing to review the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter. If the finding of the school board is reversed by the court and the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he or she may have sustained by reason of the action of the said school board. (8)

Nevada. The section of the Nevada law dealing with "Dismissals and Refusals to Reemploy" reads as follows:

391.311 Definitions. The following terms, whenever used or referred to in NRS 391.312 to 391.3196, inclusive, have the following meaning unless a different meaning clearly appears in the context:

1. "Administrator" means any teacher the majority of whose working time is devoted to service as a superintendent, supervisor, principal, vice principal or the director of a division or its equivalent in the school district.

2. "Board" means the board of trustees of the school district wherein a teacher affected by NRS 391.311 to 391.3196, inclusive, is employed.

3. "Superintendent" means the superintendent of a school district or the person acting as such.

4. "Teacher" means any certified employee of a board of trustees of a school district who has been employed by such board of trustees on a permanent basis at the end of the probationary periods as provided in NRS 391.

391.3115 Provisions of NRS 391.311 to 391.3197 inapplicable to substitute or adult education teachers. The provisions of NRS 391.311 to 391.3197, inclusive, do not apply to substitute teachers or teachers employed for adult education.

391.312 Grounds for dismissal, refusal to reemploy teacher.

1. A teacher may be dismissed or not reemployed for the following reasons:

- (a) Inefficiency;
- (b) Immorality;
- (c) Unprofessional conduct;
- (d) Insubordination;

- (e) Neglect of duty;
- (f) Physical or mental incapacity;
- (g) A justifiable decrease in the number of positions due to decreased enrollment or district reorganization;
- (h) Conviction of a felony or of a crime involving moral turpitude;
- (i) Inadequate performance;
- (j) Evident unfitness for service;
- (k) Failure to comply with such reasonable requirements as a board may prescribe;
- (l) Failure to show normal improvement and evidence of professional training and growth;
- (m) Advocating overthrow of the Government of the United States or of the State of Nevada by force, violence or other unlawful means, or the advocating or teaching of communism with the intent to indoctrinate pupils to subscribe to communistic philosophy;
- (n) Any cause which constitutes grounds for the revocation of a teacher's state certificate;
- (o) Wilful neglect or failure to observe and carry out the requirements of this Title; or
- (p) Dishonesty.

2. In determining whether the professional performance of a teacher is inadequate, consideration shall be given to the regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the board.

391.313 Admonition of teacher: Duty of principal, administrator. Whenever a principal or other school administrator charged with supervision of a teacher finds it necessary to admonish a teacher for a reason that he believes may lead to dismissal or cause the teacher not to be reemployed, he shall:

1. Bring the matter to the attention of the teacher involved and make a reasonable effort to assist the teacher to correct whatever appears to be the cause for potential dismissal or failure to reemploy; and

2. Except as provided in NRS 391.314, allow reasonable time for improvement, which shall not exceed 3 months.

391.314 Suspension of teacher without notice, hearing by superintendent of school district.

1. Whenever a superintendent has reason to believe that cause exists for the dismissal of a teacher and when he is of the opinion that the immediate suspension of the teacher is necessary in the best

interests of the children in the district, the superintendent may suspend the teacher without notice and without a hearing. Notwithstanding the provisions of NRS 391.312, a superintendent shall automatically suspend a teacher that has been officially charged but not yet convicted of a felony or a crime involving moral turpitude. If the charge is dismissed or if the teacher is found not guilty, he shall be reinstated with back pay and normal seniority. The superintendent shall notify the teacher in writing of the suspension.

2. Within 10 days after such suspension becomes effective, the superintendent shall begin proceedings pursuant to the provisions of NRS 391.312 to 391.3196, inclusive, to effect the teacher's dismissal.

3. If sufficient grounds for dismissal do not exist, the teacher shall be reinstated without loss of compensation.

391.315 Recommendations for dismissal, against reemployment.

1. A superintendent may, or at the direction of the board shall, recommend that a teacher be dismissed or not reemployed.

2. The board may recommend that a superintendent be dismissed or not reemployed.

391.316 Professional review committee: Creation; number, qualifications; appointment; terms.

1. There is hereby created a professional review committee which shall consist of not less than 42 persons of recognized scholarship and professional standing who have been actively engaged in teaching or related administrative or supervisory services in the public schools of this state for the 5 years preceding their appointment. The members of the committee shall be appointed by the superintendent of public instruction and approved by the state board of education.

2. A majority of the committee shall consist of teachers not occupying the position of an administrator. The total committee shall be broadly representative of the teaching profession, including administrators.

3. The superintendent of public instruction shall develop a method of seeking nominations for the committee from the teachers of the state.

4. Except as provided in subsection 6, each member of the committee shall be appointed for a term of 3 years. The superintendent of public instruction shall fill any vacancy which may occur on the committee. Such appointee must be approved by the state

board of education and will serve for the remainder of the term of the member that he was appointed to replace.

5. The superintendent of public instruction shall give the members such instructions as he considers necessary to perform their duties.

6. Of the members of the initial professional review committee, one-third shall be appointed for a term of 1 year, one-third for a term of 2 years, and one-third for a term of 3 years.

391.317 Notice by superintendent of school district of intention to recommend dismissal, against reemployment; contents of notice.

1. At least 15 days before recommending to a board that it dismiss or not reemploy a teacher, the superintendent shall give written notice to the teacher, by registered or certified mail, of his intention to make such recommendation.

2. Such notice shall:

(a) Inform the teacher of the grounds for the recommendation.

(b) Inform the teacher that, if a written request therefor is directed to the superintendent within 10 days after receipt of the notice, the teacher is entitled to a hearing before a panel of the professional review committee to review the matter.

391.318 Request for review: Action by superintendent of school district.

1. If no request for a review is made within the time period allowed, the superintendent shall file his recommendation with the board. The board may, by resolution, act on the recommendation as it sees fit. (9)

Tennessee. The Teachers' Tenure Act in Tennessee

makes the following provision:

49-1401. Definitions.--Whenever the words or phrases defined in this section are used in §§ 49-1401--49-1419 they shall have the meaning and application given in these definitions, unless the context and obvious intent definitely indicate otherwise.

(1) The word "teacher" includes teachers, supervisors, principals, superintendents and all other certified personnel employed by any county, city or special district board of education, for service in public elementary and secondary schools in Tennessee, supported in whole or in part by state or federal funds.

(2) The word "board" means the county board of education, the city board of education or the special district board of education holding jurisdiction in their respective territories. In the event that a school system operates without a board of education, the authority which performs the functions usually performed by a board shall be indicated by the word "board."

(3) The word "superintendent" refers to the county superintendent, the city superintendent or the superintendent of a special school district, or to any other officer performing the function of a superintendent.

(4) The word "tenure" indicates the statutory requirements, conditions, relations, and provisions, in this chapter, under which a teacher employed by a board holds a position as a teacher under the jurisdiction of the board. Administrative and supervisory personnel shall have tenure as teachers and not necessarily tenure in the specific type of position in which they may be employed.

(a) "Permanent tenure" refers to a term and condition of tenure extending from the time when the teacher acquires the status of permanent tenure until such time as the teacher arrives at the maximum age set forth in this chapter, resigns, retires or is dismissed under provisions of this chapter.

(b) "Limited tenure" is a form of tenure under which a teacher may have a position for a limited period of time and may extend his tenure for a like period of time by meeting certain requirements set forth in this chapter.

(5) The personal pronouns he and she and their various forms shall be interpreted as being used in the generic sense and as referring to any teacher or other person regardless of sex.

(6) "Probation" is a condition and period of trial during which a teacher is under observation to determine his fitness for tenure status.

(7) "Transfer"--removal from one position to another position under jurisdiction of the same board.

(8) "Inefficiency"--being below the standards of efficiency maintained by others currently employed by the board for similar work: habitually tardy, inaccurate, or wanting in effective performance of duties.

(9) "Incompetence"--being incapable; lacking adequate power, capacity, or ability to carry out the duties and responsibilities of the position. This may apply to physical, mental, educational, emotional or other personal conditions. It may include lack

of training or experiences. Evident unfitness for service; physical, mental or emotional condition unfitting teacher to instruct or associate with children; or inability to command respect from subordinates or to secure cooperation of those with whom he must work.

(10) "Neglect of duty"--gross or repeated failure to perform duties and responsibilities which reasonably can be expected of one in such capacity; continued unexcused or unnecessary absence from duty.

(11) "Conduct unbecoming to a member of the teaching profession" may consist of but not be limited to one or more of the following:

(a) Immorality.

(b) Conviction of a felony or a crime involving moral turpitude.

(c) Dishonesty, unreliability, continued will-full failure or refusal to pay one's just and honest debts.

(d) Disregard of the Code of Ethics of the Tennessee Education Association in such manner as to make one obnoxious as a member of the profession.

(e) Improper use of narcotics or intoxicants.

(12) "Insubordination" may consist of:

(a) Refusal or continued failure to obey the school laws of Tennessee, or to comply with the rules and regulations of the board, or to carry out specific assignments made by the board, the superintendent or the principal, each acting within its own jurisdiction, when such rules, regulations and assignments are reasonable and not discriminatory.

(b) Failure to participate in an in-service training program as set up by the local board of education and approved by the state board of education.

(c) Treason; any effort to sabotage or overthrow the government of the United States.

(d) Refusal by the teacher to disclose to the board whether or not he is, or has been, a member of the Communist or any other party which advocates the overthrow of the government.

(13) "Abolition of position"--a regular bona fide elimination of a position for sufficient, just, and nondiscriminatory reasons.

49-1412. Dismissal and suspension--Grounds.--No teacher shall be dismissed or suspended except as provided in this chapter. The causes for which a teacher may be dismissed are as follows: incompetence, inefficiency, neglect of duty, unprofessional conduct and insubordination.

49-1413. Suspension pending investigation.--A superintendent may suspend a teacher at any time that may seem necessary, pending investigation or final disposition of a case before the board or an appeal, provided that if the teacher is vindicated or reinstated he shall be paid the full salary for the period during which he was suspended.

49-1414. Written charges.--When charges are made to the board of education against a teacher, charging the teacher with offenses which would justify dismissal of the teacher under the terms of this chapter, the charges shall be made in writing, specifically stating the offenses which are charged, and shall be signed by the party or parties making the charges.

49-1415. Notice of charges warranting dismissal.--If in the opinion of the board charges are of such nature as to warrant the dismissal of the teacher, the superintendent shall give the teacher a written notice of this decision, together with a copy of the charges against her, and a copy of a form which shall be provided by the state commissioner of education advising the teacher as to her legal duties, rights, and recourse under the terms of this chapter.

49-1416. School board hearing.--A teacher, having received notice of charges against her, may within thirty (30) days after receipt of notice, demand a hearing before the board, as follows:

(1) The teacher shall give written notice to the superintendent of her request for a hearing.

(2) The superintendent shall within five (5) days after receipt of request, indicate the place of such hearing and set a convenient date, which date shall not be later than thirty (30) days following receipt of notice demanding a hearing.

(3) The teacher may appear at the hearing and plead his cause in person or by counsel.

(4) The teacher may present witnesses, and shall have full opportunity to present his contentions and to support them with evidence and arguments.

(5) The chairman of the board conducting said hearing is hereby empowered to issue subpoena for witnesses to compel their attendance at hearings authorized under this section. All parties to the proceeding shall have the right to have subpoenas issued by the chairman of the board to compel the attendance of all witnesses deemed by such parties

to be necessary, for a full and complete hearing. All witnesses shall be entitled to the witness fees and mileage provided by law for legal witnesses, which fees and mileage shall be paid as a part of the costs of such proceedings. The costs of such proceeding shall be paid by the losing party.

(6) The chairman of the board shall administer oaths to witnesses, who shall testify under oath.

(7) On request of either party to the trial witnesses may be barred from the hearing except as they are called to testify. The hearing may be private at the request of the teacher or in the discretion of the board.

(8) The board shall within ten (10) days decide what disposition to make of the case and shall immediately thereafter give the teacher written notice of its findings and decision.

(9) The superintendent or other school officials, shall not be held liable, personally or officially, when performing their duties in prosecuting charges against any teacher or teachers under this chapter.

49-1417. Judicial review.--A teacher under "permanent tenure" or "limited tenure" status who is dismissed or suspended by action of the board, may obtain a judicial review by filing a petition in the chancery court of the county where the teacher was employed. Such petition shall be filed within thirty (30) days from the receipt by the teacher of notice of the decision of the board. The petition shall state briefly the issues involved in cause, the substance of the order of the board, or the respects in which the petitioner claims the order of the board is erroneous, and praying for an accordant review. The petition shall be addressed to the presiding chancellor and shall name as defendants the member of the board and such other parties of record, if such, as were involved in the hearing before the board.

The petitioner shall give bond for costs as in other chancery suits or oath of paupers in lieu.

Upon the filing of said petition the clerk and master shall immediately send, by registered return-receipt mail, to the chairman of the board a notice of the filing of said petition and a certified copy thereof. The clerk shall also send a similar notice to the last known post office address of each other party named as defendant. In lieu of notice by registered mail, subpoena to answer may be served personally on each defendant, as in other chancery cases.

The filing of such petition shall suspend the order of the board pending a decision by the chancellor, but the teacher shall not be permitted to return to teaching pending final disposition of the appeal. All defendants named in said petition, desiring to make defense, shall do so by answer (in which grounds of demurrer shall be incorporated) to said petition within thirty (30) days from the date of the filing of said petition, unless the time be extended by the court. Any other person who may be affected by the decision to be made by said court may, upon proper leave given, intervene and file an answer in the cause. Amendments may be granted as in other chancery procedure. The cause shall stand for trial and shall be heard and determined at the earliest practical date, as one involving state, county or municipal revenue. The hearing shall be de novo and may be on deposition and interrogatories, or on oral testimony. The chancellor shall reduce his findings of fact and conclusions of law to writing and make them parts of the record.

Any party dissatisfied with the decree of the court may, upon giving bond as required by law in other chancery causes, appeal to the Supreme Court, where the cause shall be heard on the transcript of the record from the chancery court.

49-1418. Continuing contract law preserved.-- The Teachers' Continuing Contract Law, § 49-1306, shall not be construed to be affected by the provisions of this chapter, except that said continuing contract law shall not apply to teachers who have acquired permanent or limited tenure under this chapter. (10)

Case Law in Mississippi

Few cases relating to dismissal have reached courts in Mississippi. Apparently none of these have dealt directly with the matter of incompetence.

Overstreet v Lord, 160 Miss. 444, 134 So. 169 (1931).

Several decades ago, a Mississippi teacher insisted on resuming his teaching duties before he had fully recovered from smallpox. School had been closed because of an epidemic.

At re-opening time, the county health officer examined the teacher, and reported that he was in the "crust stage, falling off, shedding off, and at that time it is very contagious." Apart from school regulations, a health statute regarding smallpox provided for a fine and the imprisonment of any person having recently had that disease if he goes "abroad in the company of other persons who have not had the disease" before he obtains a certificate from his attending physician stating that he has recovered from it. The health officer, county superintendent, and school trustees requested the teacher to stay away from school until he recovered to the extent that his presence would not expose pupils. He refused to do so. Dismissal was upheld.

Cheatham v Smith, 229 M 803, 92 So 2d 203. In the Cheatham case, the issue involved was a school board's requirement that teachers without college degrees would be required to take summer school work toward the degree. When one of the teachers did not do so, the court determined that this did not automatically invalidate her contract. The court held that she could be dismissed only under the provisions of § 6282-26, Mississippi Code 1942 Annotated.

Stegall v Jones, 241 So 2d 349. In Stegall v Jones, the court held that the removal of a principal of an attendance center was justified where it was shown that he had violated written policies of the county board of education by using school gasoline in his own automobile, by charging personal long distance phone calls to the school, by

purchasing certain equipment without taking competitive bids, and by making purchases of material under a Title II project which were not reimbursable under the project, thus causing loss to the attendance center and the school district.

Madison County Board of Education v Miles, 252 M 711, 173 So 2d 425. (1965). In a somewhat more involved case, seven charges were filed against George C. Miles, principal of the Flora Attendance Center, by the county superintendent of education. The court held that four of the charges were so vague and indefinite as to not justify comment.

However, one of the remaining charges was that Miles "maliciously impugned the integrity of an employee of the school." The employee was the head of the school lunch-room who had for some years taken groceries from the lunch-room and sold them. Miles put a stop to the practice of various people buying groceries through the school lunch-room. The court held on this charge that Miles was manifestly correct in doing so and should be commended.

Another of the charges was that Miles had challenged the decisions and policies of the Madison County Board of Education with reference to the appointment of the trustees of the Flora Attendance Center. Miles was cleared on this charge when it developed at the hearing that the method of selecting the trustees was changed after Miles called to the attention of the county superintendent of education that the

local board of trustees was not legally selected.

The last of the charges that the court considered was one that Miles antagonized a large segment of the patrons and citizens of the Flora Attendance Center, thereby hindering an effective school-community relationship. The court disallowed this charge after it was shown that someone drew up six copies of a petition seeking the removal of Miles as principal. Although these petitions were circulated in the community the promoters were able to get only eight signatures.

The court found that Miles was not guilty of any of the causes mentioned in § 6282-26, Mississippi Code 1942 Annotated, and he was ordered reinstated in his position.

Case Law Elsewhere

Several representative cases concerning teacher dismissal for incompetence are presented in this section, followed by a summary of the case law on the subject.

Crownover v Alread School District No. 7, 200 S.W. 2d 809 (Arkansas, 1947). On September 17, 1945, Miss Crownover entered into a contract to teach in the Alread (Arkansas) School District. She began teaching that same day and continued to do so until January 11, 1946, when she received a written notice of discharge from the school board.

The court held that a teacher, although employed for a fixed term, may be discharged by the school board at any time for incompetency, negligence in the discharge of duties,

or wilful refusal to obey lawful and proper orders. The court found for the school board, based on the following evidence.

The school principal testified that Miss Crownover had (a) refused to obey his orders; (b) insulted him, and otherwise shown him disrespect in the presence of the pupils; (c) failed to keep order in her school room; (d) humiliated the pupils; and (e) engaged in a snowball fight during school hours.

In addition, it was testified by the president of the school board that he personally visited her classroom and observed the complete lack of discipline and order. The secretary of the school board testified that he went to Miss Crownover and asked her to meet with the board and the principal to see if the existing differences could be settled. However, Miss Crownover refused to do so.

The appellate court did note, however, that

This was her first effort as a school teacher; it is possible that she did not possess, at that time, the poise, patience, fortitude and equilibrium so essential to a teacher of children in the seventh and eighth grades. Her experience at the Alread School District will undoubtedly tend to increase her efficiency, for experience is a good teacher. But under the record before us, . . . the judgement of the circuit court is in all things affirmed. (11)

Conley v. Board of Education of the City of New Britain, 123 A. 2d 747 (Connecticut, 1956). Conley was appointed instructor of physical education in a junior high school in New Britain, Connecticut, in 1926. He served in this post, with the exception of a four-year leave of absence, until the end of the school year in 1953. In May, 1953 he received written notice from the superintendent of schools that the school board had terminated his

contract because of "gross inefficiency, namely, in the normal duties of his teaching position." Conley requested a hearing before the board, which was held, and at which he was represented by counsel. In September, 1953, the board resolved that the charges of "gross inefficiency" had been proved by a preponderance of the evidence.

The court found that the school board did not abuse its discretion in the matter of the right of examination and cross-examination of witnesses in the hearing. In ruling for the school board, the appellate court held:

With regard to the plaintiff's claim that the evidence does not support the findings and conclusions of the board, two things must be borne in mind. The charge was "gross inefficiency," one of the grounds for dismissal specified in the tenure act. The decision of the board must be based upon the evidence directed to this specific charge and upon no other. Such evidence must carry the burden of proving by a preponderance, to the satisfaction of the majority of the board, that the plaintiff was grossly inefficient. . . . (12)

The appellate court defined a "grossly inefficient person" as

one whose efforts were failing, to an intolerable degree, to produce the effect intended or desired--a manifestly incompetent or incapable person. (13)

The appellate court added

Because of the requirement of the tenure act that the decision of the board shall be based upon the evidence supporting the specific charge or charges, and upon no other evidence, proof of gross inefficiency must be made by evidence adduced at the hearings and may not, as in other cases before administrative agencies, include what the members may properly have learned by personal observation. . . . The board, however, is the judge of the credibility of the witnesses and has the power to decide all factual matters before it. . . . A board has the right to demand that a teacher know his subject and that he be capable of arousing and holding the interest of his pupils and maintaining discipline. . . .

The question is not whether the trial court or this court would have reached the same conclusion as the board. In this appeal, as in any such appeal, the plaintiff charges that the record before the board does not support the action it took. He has the burden of proving it. . . . The ruling of the trial court with respect to the burden of proof on the plaintiff's appeal was correct. (14)

Blair et al. v Mayo et al.. 450 S.W. 2d 582 (Tennessee, 1970). The principal and assistant principal of Central High School at Woodberry, Cannon County, Tennessee, brought suit in 1969 to enjoin higher school officials from carrying out transfers or dismissals without concurrence of the superintendent and a hearing based on written charges. Gentry Mayo, having served as a classroom teacher for nine years at Central High School and as principal of that school for three years, and Robert A. Harris, Jr., having served as classroom teacher for eighteen years and as assistant principal of Central High School for two years, were elected by the school board on March 13, 1969, to the positions of classroom teacher and basketball coach, respectively, at Central High School.

The Supreme Court of Tennessee found for the principal and assistant principal. It noted that, where the men were summarily demoted from positions they had held for years to lower paying positions, without being given any reason therefor, such action constituted dismissal from their existing positions and violated their rights under the Tennessee Teacher's Tenure Law.

Summary of case law elsewhere on dismissal for incompetency. Over the years and across the country, a number of cases concerning dismissal of professional personnel

for incompetency have come before the courts. This information is summarized below.

Grounds. In several states courts have held that where a statute enumerates grounds for dismissing teachers, school boards cannot dismiss on other grounds. Such states include New York, New Hampshire, California, Arizona, Montana, and West Virginia. Contrary to these opinions, it has been held in Kansas and Oklahoma that a statutory enumeration of causes for dismissal does not preclude a contract stipulation of "other causes." (15)

Cause. Deciding where authority rests for determining cause is not the same as deciding whether there is adequate cause in a particular instance. There have been several disputes over who may determine cause. Where cause is not specifically defined, school officials are usually authorized to determine what constitutes cause--if they act in good faith. Cases speaking to this point may be found in such states as Illinois, Indiana, Kansas, Missouri, Texas, and Arizona. (16)

Evidence. Several inadequacies of evidence have appeared concerning dismissal charges against teachers. A teacher was upheld in one instance where the charges centered around using the pupils to address envelopes to their parents which were intended for enclosing political circulars favoring particular candidates. Another teacher was upheld where the grounds were that over a six-year period she had twice been late to school and once found to be smoking in her

classroom after the term had ended for the pupils. A third instance was in the Miles case in Mississippi, previously noted. In a fourth instance a teacher was upheld, with the court reasoning that becoming the "center of controversy," when the teacher did not cause or precipitate it, did not warrant dismissal. In another case, when a teacher, through a fault of her own, became the center of a disrupting controversy her dismissal was upheld. In a Tennessee case, it was found that a defeated candidate for county superintendent cannot be denied his previous position. (17)

Prior incidents. When a board reviews the conduct of a teacher regarding dismissal, incidents which extend over a considerable period may come to mind. Dispute may concern how far back a board may go, or whether intervening developments absolve the teacher of possible charges as to previous acts. Courts differ on the issue. Part of the difference is related to whether a contract is limited or continuing.

Where a limited contract is involved, behavior before the date of the contract is not ordinarily grounds for dismissal under the contract concerned. Although courts may be rather uniform in holding that acts by a teacher before the date of a particular limited contract are not to be considered regarding dismissal charges under that contract, they vary as to the significance of previous acts where a continuing contract is involved. It has been held in Louisiana that prior incidents may not constitute grounds for dismissal from a current position. In some cases there may be evidence to

support a dismissal charge before tenure is granted, with the same cause extending into the tenure period. Dispute may relate to whether incidents which occurred before tenure is granted can afford a basis for dismissal thereafter. (18)

Definition of incompetency. Incompetence and inefficiency are not ordinarily synonymous, but they have much in common as grounds for dismissing teachers. In legal practice, what these or comparable terms actually mean depends on what courts in specific situations have said they mean. (19)

One digest refers to incompetency thus:

A relative term without technical meaning, but having a common and approved usage. The term may include something more than physical and mental attributes; it may include want of qualifications generally, such as habitual carelessness, indisposition and temperament; and may be defined or employed as meaning disqualification; inability; incapacity; general lack of capacity or fitness; or lack of special qualities required for a particular purpose, . . . the want of ability or fitness, as a matter of fact, as distinguished from eligibility or status, as a matter of law. (20)

The digest adds: "When used to describe an employee, 'incompetent' always refers to the kind of work in which he is engaged." (21)

General right. The right of school authorities to replace incompetent personnel, or proceed to improve their competence, seems necessary for maintaining good schools. Although a board may dismiss a teacher in the absence of specific statutory authorization, statutes frequently name incompetence as one ground for dismissal. Moreover, if a

statute is not specific regarding incompetence, a court may interpret related terms as covering it. In view of a board's general or specific authority to dismiss teachers for incompetence, dispute on this point usually concerns whether the evidence proved that the teacher was incompetent. (22)

Burden of proof. If a teacher is duly certified or has other acceptable evidence of qualification when employed, the burden thereafter of proving incompetence rests on the dismissing agent. It is not the teacher's duty to prove competence. (23)

Bases used in proving incompetence. Dispute often relates to the bases used in proving incompetence. Where a statute provides for teacher competence to be judged by the school board, alone or in conjunction with some other school authority and initially or on appeal, courts are slow to interfere unless fraud or abuse of discretion is alleged. But in some cases where statutes do not give such extensive power to school authorities, it has been held that determining competence is a jury matter. Complaints by patrons are often involved in charging teachers with incompetence. However, before a board dismisses a teacher, it is expected to make its own investigation. (24)

Accumulation of small items. A teacher may be charged with an accumulation of small items which add up to incompetence, although no one item alone would justify dismissal. (25)

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Revocation of license. Since a license is required for teaching, one would expect its revocation to warrant or perhaps require dismissal. However, there may be dispute as to whether revocation has actually occurred or been justified. (26)

Verification of success. One avenue of proving competence may be a positive verification of successful teaching, in contrast with proof by an accuser that the service shows incompetence. (27)

Dismissal before teaching begins. After a teacher has been employed for a term, a change in the board or some other development may result in a desire to terminate the contract. Boards may be haphazard as they cast about for rationalizations to justify dismissal. Hence, there may be disputes over whether incompetence can be a basis for dismissal before the contract term begins. Courts have upheld teachers dismissed before work had begun. The teacher must have an opportunity to show what he can do. (28)

Single ground. When a teacher is charged with incompetence, the charge may rest on one or on several grounds. The following issues have been before the courts:

1. Inability to maintain discipline. Disciplinary problems have often been the basis, or the main basis, for dismissal due to incompetence. Courts in Indiana, Iowa, Kansas, Pennsylvania, Ohio, Louisiana, Kentucky, and Oklahoma have upheld boards seeking to dismiss teachers because of incompetency in maintaining discipline. On the

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other hand, a court in California stated that failure to keep order in a classroom was remediable, under a statute which provided for a 90-day notice and opportunity to remedy defects before dismissal was authorized. General hearsay about inability to maintain discipline was inadequate to dismiss an early Vermont teacher. (29)

2. Friction between teacher and colleagues or administrative superiors. There may be friction between a teacher and administrative superiors, or other teachers. While insubordination may be charged under some conditions, charges may be otherwise stated. In a Pennsylvania case the court said that incompetency did not relate only to scholastic ability, but included fitness to meet the general demands of the teaching position. However, a Washington court held that an assistant superintendent of schools could not be dismissed for inefficiency or incompetence because of an alleged inseparably close relationship with the superintendent in the management of school property and the operation of schools in a business-like way. (30)

3. Conscientious and other objections to war. During war emergencies, there is emphasis on instilling patriotism through public education. Hence controversy has arisen over whether persons who have religious or conscientious objections to war are competent to teach in public schools. In 1918, a dismissal on this basis was upheld in a New York case because a teacher should inculcate patriotism and respect for law and order. In a World War II case in Florida, it was

found that a teacher's conduct was inimical to the ideal of citizenship as it was required to be taught by Florida laws. Therefore the teacher was incompetent to perform his duties as Dean of Boys and science teacher in a junior high school. A teacher encouraging a former student to resist the draft "ought not to be permitted to continue as a teacher in the public schools," said a court during World War II. A New York teacher was dismissed for refusing to participate in drills as part of a shelter program, inaugurated pursuant to the Cuban crisis. (31)

4. Poor learning attainment by pupils. In three cases dismissal had been upheld because of the poor academic performance of the pupils. (32)

5. Teacher sleeps during school session. In an Illinois case, it was alleged that a teacher slept during school hours, one or more times per day and 2 to 12 minutes each time. The appellate court did not rule on whether the evidence justified dismissal for cause, but left the impression that it did. (33)

6. Poor health. The health demands of the teaching vocation, physical and mental, are considerable. Physical examinations required for licensing, or for granting sick leave or disability retirement, reflect the importance of health. So does dismissal because of failure to meet health requirements.

Teachers may be dismissed because they do not pass health examinations or submit health certificates, as school authorities may require. Other problems of physical health

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may also be grounds for dismissal. A teacher may be suspended for refusal to be vaccinated. In another instance dismissal was upheld because a teacher suffered from epileptic attacks before the pupils. Dismissal was upheld in another case, not because of the teacher's marriage or legitimate pregnancy, but because of physical incapacity to perform her duties. Another teacher was dismissed after a five months' absence because of illness, supported by a physician's statement that she was incompetent to perform her duties. However, in another case, the teacher was upheld when the court said that the teacher's failure to exhibit a health certificate at the time of signing the contract did not render the contract void.

A teacher found to be suffering from olfactory hallucinations coupled with paranoid delusions was indefinitely suspended. A California teacher was dismissed for lack of mental fitness. (34)

7. Teacher assaults on pupils. In several instances teachers have been held incompetent because of assaults made on pupils. (35)

8. Alleged incompetence because of administrative experience. A teacher was upheld when the board charged that her previous administrative experience made it inadvisable to employ her as a teacher. (36)

9. Lack of professional growth. Most early appraisal of teacher competence, as shown by training and experience, related to a one-time evaluation as of a particular date.

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But with continuous growth in the responsibility of the school and in the complexity of problems facing individual teachers, educational leaders are increasingly aware of the need for continuous growth beyond the preparation required for initial licensing. In an Illinois case, it was held reasonable to dismiss a teacher because of a rule to require added growth of teachers who held less than a bachelor's degree. (27)

Multiple grounds. Statutes which authorize dismissal of a teacher for incompetence or inefficiency often include other bases for dismissal: immorality, insubordination, neglect of duty, violation of local or state regulations concerning schools, etc. (38) In the following instances dismissal was upheld on multiple charges of incompetence.

1. In the well-known Singleton case the following items were included:
 - a. pupils walking around the room without permission or reprimand
 - b. instructions shouted in harsh and irritating tones
 - c. cheating taking place without objection
 - d. peculiar seating arrangement of pupils
 - e. teacher so obese that she could not move around among pupils
 - f. absent in class
 - g. transferred from one school to another without improvement (39)

The following were included in another case:

- a. using profane language in presence of pupils
- b. improper conduct on playground
- c. disobeyed rule on use of county library
pupils
- d. failure to cooperate with nurse and music supervisor
- e. refusing to attend the teacher's institute

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- f. refusing to discuss problems with superintendent
 - g. defective hearing; unable to understand recitations (40)

3. Another case was based on a lack of self-control, lack of courtesy in dealing with co-workers, and poor judgement in handling pupil problems. Semi-annual reports of principals showed a number of areas of needed improvements, and the teacher's attention had been called to the need for improvement. (41)

4. Dismissal was upheld in Minnesota where the charges included:

- a. inability to maintain discipline and prevent student strikes
- b. permitting dancing in the school building
- c. attending a late and somewhat indiscreet party at a lumber camp in the company of students (42)

5. Dismissal was upheld in Washington where there was

- a. bad and deteriorating discipline
- b. absence without excuse or request for a substitute
- c. failure of assurance as to intention to carry out contract
- d. failure to keep the school together (43)

6. An Illinois court upheld dismissal for incompetence based on: evidence that the school teacher was often late, that he left the building during school hours for extended periods of time, that he did not regularly assign lessons, that long periods of time elapsed between assignments of lessons and recitations thereof, that he brought snakes to school, that he experimented with explosives, that he cracked coconuts, and that he played

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checkers with students during school hours. (44)

7. In another Illinois case dismissal was upheld based on charges that the teacher refused to permit small children to go to the toilet except at specified periods, and that soiled clothing resulted; that she humiliated children in class by questions as to where their money was for contributions; that one youngster was forced to write with his right hand rather than his natural left hand, and that she made disparaging remarks to pupils regarding their parents. (45)

8. A Pennsylvania court upheld dismissal of a teacher where the charges included that after school hours and during summer vacation she acted as waitress in a lunch-room and beer garden located about 125 feet from the school, and occasionally acted as bartender. In this beer garden and in the presence of several of her pupils she took an occasional drink of beer, served beer to customers, shook dice with customers for drinks, and played, and showed customers how to play, a pinball machine. (46)

In a number of instances, cases rejecting dismissal have been based on multiple charges of incompetence. In general, the courts have considered the charges one by one, and in almost all instances, the rejection of dismissal has been based on a lack of evidence or a lack of proof of incompetence. The following synopsis of a 1963 Louisiana case (Johns v Jefferson Davis Parish School Board) summarizes

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most of the major points made in these cases.

The Louisiana court recognized several categories of charges in the dismissal of a principal-teacher for incompetence. The categories, together with the evidence and evaluation by the court, were as follows: (1) Sexual promiscuity in the school. Five instances were proven to have occurred during school hours, secretly and in surreptitious violation of adequate school regulations. There was no showing that the principal-teacher could reasonably have known about or prevented these instances. (2) Poor records of free lunches supplied to indigent pupils. The court reasoned that the principal had responsibilities which were more important than filling out these minor forms, and that a shortcoming on this point should not be grounds for dismissal. (3) Disregard of the superintendent's instruction regarding school bus drivers. The court said that for rather good reasons the principal had instructed a change and it saw no willful neglect or incompetence in this connection. (4) Incompetence on reports. The teacher failed to report a decrease in the number of students on the route of one bus driver, which the court thought unimportant, and noted that the board did not think it was serious enough for disciplinary action until making up a list of charges. Another report error consisted of listing an illegitimate child, who was graduating, under the name of the father rather than the baptismal name. But within nine days after this was called to the teacher's attention, he

had a corrected diploma issued. There was no basis for dismissal because of these report errors. The board had failed to prove its charges. (47)

In a related case, a Massachusetts court refused to uphold charges of inefficiency and incompetence essentially against a superintendent because the school committee essentially refused to present evidence. At the "hearing" the committee called no witnesses and presented no evidence other than its own allegation. The superintendent had witnesses and produced documentary evidence, which the committee did not examine. The committee had not substantiated its charges, and it was ordered to reinstate the superintendent. (48)

Use of rating scales. Some statutes require the use of rating scales in evaluating teachers, based on forms supplied by some agency such as the state department of education. Such scales may be important in teacher dismissal. In one case in Pennsylvania the teacher had worked in the system 31 years. Two announced visits were made to his classroom in 1958, and in 1961 the county superintendent made three unannounced visits. The procedure required by a statute in that state for use of an approved rating system was not observed, and the statutory file was not kept by the board; thus there was no authority for dismissal for incompetence. (49)

The competence of a California teacher was evaluated according to standards used by the California Teachers' Association in recommending teachers for employment. A rating committee established a number of shortcomings, and the evidence supported the charges; however, the teacher was not dismissed, but only failed to get the regular salary increase. (50)

Refusal to permit supervisor to enter. Dismissal was upheld in a Louisiana case where a teacher refused to permit a supervisor to enter his classroom and observe his teaching despite a board rule which required that he do so. (51)

"Expert" testimony. Superintendents, principals, and supervisors are considered "experts" by the court with respect to the competence and adequacy of teachers. In one case dismissal was upheld based on the uncontradicted testimony of the principals of four different schools to which a teacher had been assigned, as well as the testimony of the superintendent and the supervisor of secondary education. In another case a teacher had served 14 years under one principal, and the principal's testimony against the teacher was the basis for dismissal. In a similar case elsewhere, both the principal and the county superintendent were witnesses. In another case, the teacher was visited by three assistant county superintendents during one month, and she had been visited by a supervising principal at various times during the school year. (52)

Recommendations

Based on the material presented in this paper, it is recommended that:

1. The rights of parents, guardians, and patrons with respect to allegedly incompetent teachers and administrators be clarified. This could be accomplished by (a) inservice training of administrative personnel; (b) regulations of the state department of education as conditions of funding or accreditation or both; or (c) legislation. It should be established as procedure essentially the following: (i) Parents, guardians, or patrons may register a written complaint against a school employee with the employee's immediate superior. (ii) The immediate superior must investigate the complaint, and, if it seems justified in any way, seek remedial action. (iii) If, after a reasonable period of time, the situation appears to the person making the complaint to continue to exist, a complaint may be filed with the next higher officer in the structure and the process repeated until the board of education is reached. (iv) After investigation, the board may decide to hold a hearing.

2. A strong legal definition of "incompetence" be established for school personnel in Mississippi. This might be accomplished either by legislation or by bringing several test cases to court. The legislature might enact a definition similar to that in the laws of Tennessee;

Being incapable; lacking adequate power, capacity, or ability to carry out the duties and responsibilities of the position. This may apply to physical, mental, educational, emotional or other personal conditions. It may include lack of training or

experience. Evident unfitness for service; physical, mental or emotional condition unfitting teacher to instruct or associate with children; or inability to command respect from subordinates or to secure cooperation of those with whom he must work. (53)

3. The procedure for determining incompetence be clarified. (In making this recommendation, it is assumed that the professional employee in question is in some position of expecting continuing employment, as in the middle of a contract period. The simple non-renewal of a contract raises numerous other problems which are outside the scope of this paper.) The existing law in Mississippi needs to be modified to incorporate the following points:

(a) Routinely, or certainly when a matter is brought to attention, professional employee performance should be investigated, shortcomings should be called to the attention of the employee, and remedial action, if necessary, should be started. Records should be kept on these matters. The responsibility for this matter lies with the employee's immediate superior.

(b) If, within a reasonable period of time, the remedial action has not produced satisfactory results, proceedings may be started for dismissal on the basis of incompetence.

(c) The superintendent, in giving written notice to an employee, should send it by registered mail. At the same time the employee should be advised of his major legal rights in the situation.

(d) The employee may be suspended pending a hearing. However, if the employee is vindicated or reinstated he is entitled to all pay and benefits.

(e) If the employee plans to contest the decision of the superintendent, he must file notice within a specified time of an intention to contest. Upon request, the employee is entitled to a statement of the charges.

(f) The hearing may be public or private at the discretion of the employee.

(g) Each party shall have the right to appear with or without counsel. If requested, the superintendent shall issue subpoenas for witnesses for either party. Each party shall have the right to present witnesses and other evidence and to cross-examine witnesses.

(h) In any appeal, the board shall file a transcript of the hearing and related documents. The state board of education or the court may permit additional evidence to be introduced. Any appeal must be filed within a stated period of time.

(i) The costs of the hearing and of any appeals shall be paid by the losing party.

(j) The case against the employee should be based on proof of incompetence as demonstrated by such items as (i) evidence of attempts to correct a deficiency after due notification of shortcoming(s); (ii) visitations by multiple people who are in a position to evaluate the employee's

work; (iii) the use of rating scales and other objective or semi-objective criteria that have been developed through cooperative action including a variety of types of school employees; (iv) a physician's statement; (v) a file of minor incidents; (vi) other non-discriminatory factors other than incompetence which may warrant dismissal.

4. As an alternative to a portion of the recommendations above, local school districts in Mississippi be obligated to establish performance-based criteria for contracting with and evaluating all school personnel in each district; or, the frequent renewal of professional certificates be based, in part, on successful professional experience, defined in an objective way, and on continued professional growth.

NOTES

493. (1973).
- (1) 68 American Jurisprudence 2d. Schools §161.
 - (2) Ibid. 493-494.
 - (3) Ibid. 494.
 - (4) Mississippi Code Annotated (1972) § 37-9-59.
 - (5) Alabama Teacher's Tenure Act. Title 52, § 358. (1972).
 - (6) Ibid. § 359.
 - (7) 5A Connecticut General Statutes Annotated. Title 10 § 151 (Supp. 1973).
 - (8) Louisiana Statutes Annotated, §17:443 (West Supp. 1973).
 - (9) Nevada Revised Statutes, §391.311 et seq. (Supp. 1971).
 - (10) 9 Tennessee Code Annotated. (Supp. 1973).
 - (11) Crownover v Alread School District No. 7. 200 S.W. 2d 809 (Arkansas, 1947).
 - (12) Conley v Board of Education of the City of New Britain, 123 A. 2d 747 (Connecticut, 1956).
 - (13) Ibid.
 - (14) Ibid.
 - (15) Harold H. Punks. The Teacher and the Courts. Danville, Illinois: The Interstate Printers and Publishers, Inc. 1971. pp. 555-556.
 - (16) Ibid., pp. 557-558.
 - (17) Ibid., pp. 559-560.
 - (18) Ibid., pp. 560-561.
 - (19) Ibid., p. 563.
 - (20) 42 C.J.S. 539-540.
 - (21) Ibid.

- (22) Punks, op. cit., p. 563.
- (23) Ibid., pp. 563-564.
- (24) Ibid., pp. 564-565.
- (25) Ibid., p. 565.
- (26) Ibid.
- (27) Ibid., pp. 565-566.
- (28) Ibid., p. 566.
- (29) Ibid., pp. 566-567.
- (30) Ibid., p. 567.
- (31) Ibid., pp. 567-569.
- (32) Ibid., p. 569.
- (33) Ibid.,
- (34) Ibid., pp. 569-571.
- (35) Ibid., p. 571.
- (36) Ibid.,
- (37) Ibid., pp. 571-572.
- (38) Ibid., p. 572.
- (39) Ibid.
- (40) Ibid.
- (41) Ibid., pp. 572-573.
- (42) Ibid., p. 573.
- (43) Ibid.
- (44) Ibid.
- (45) Ibid.
- (46) Ibid.
- (47) Ibid., p. 574.

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- (48) Ibid., pp. 575-576.
 - (49) Ibid., pp. 576-577.
 - (50) Ibid., p. 577.
 - (51) Ibid.
 - (52) Ibid., pp. 577-578.
 - (53) 9 Tennessee Code Annotated, § 49-1401 (9),
(Supp. 1973).